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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940.

No. 550.

EARL MOORE,
Petitioner,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY,
Respondent.

BRIEF OF ILLINOIS CENTRAL RAILROAD COMPANY.

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STATEMENT OF THE CASE.

MAY IT PLEASE THE COURT:

Petitioner, Earl Moore, filed this suit in the Circuit Court of the First Judicial District of Hinds County, Mississippi, on September 15, 1936 (R. p. 19). He alleged that he had been employed by respondent as a switchman in its Jackson, Mississippi, yards on June 2, 1926 (R. p. 2); that he was a member of the Brotherhood of Railroad Trainmen, a labor union, which had a contract with respondent providing for rules and rates of pay of trainmen employed by respondent, and that he was entitled to the benefits of said labor union contract (R. p. 2), this contract being made Exhibit A to the declaration (R. pp. 4-16);

that said contract provided that "no person should be fired or discharged without just cause" (R. p. 3); that on or about February 15, 1933, he was discharged without just cause (R. p. 3). He sought damages.

The so-called contract between the Brotherhood of Railroad Trainmen and respondent, denominated by the contracting parties as a "Schedule of Wages and Rules Governing Yardmen and Switchtenders," is dated April 1, 1924, and is a collective bargaining agreement between the labor union and respondent, made pursuant to the Railway Labor Act of May 20, 1926, as amended June 21, 1934, 48 Stat. at L. 1185, 45 U.S.C.A., Sec. 151, et seq. With respect to the discharge of yardmen or switchtenders said collective bargaining agreement contains the following provision in Article 22 entitled "Investigations," paragraph (D):

> "(D) Yardmen or switchtenders taken out of the service or censured for cause, shall be notified by the Company of the reason therefor, and shall be given a hearing within five days after being taken out of service, if demanded, and if held longer shall be paid for all time so held at their regular rates of pay. Yardmen switchtenders shall have the right to be present and to have an employe of their choice at hearings and investigations to hear the testimony, and ask questions which will bring out facts pertinent to the case. They shall also have the right to bring such witnesses as they desire to give testimony, and may appeal to higher officers of the Company in case the decision is unsatisfactory. Such decision shall be made known within three days at New Orleans and at other points ten days after the hearing, or yardmen or switchtenders shall be paid for all time lost after the expiration of three days at New Orleans and ten days at other points. In case the suspension or dismissal or censure is found to be unjust, yardmen or switchtenders shall be reinstated and paid for all time lost."

On February 15, 1933, petitioner was discharged by respondent. He requested a hearing on February 17, 1933; the hearing was held at Jackson, Mississippi, on February 20, 1933, and a decision unsatisfactory to him was rendered by the Superintendent before whom the hearing took place. He appealed to the General Superintendent, but did not pursue his appeal. (See Efficiency Record, R. pp. 104-105.)

POINTS.

Two questions are urged by respondent on this appeal:

1. Respondent contends that petitioner's action is governed by the state statute of limitations of three years (Mississippi Code 1930, Section 2299, Appendix A, p. 25).

This statute applies to "actions * * * on any unwritten contract, express or implied." The highest court of the state has held that this statute is applicable to any contract which must be proved in part by parol testimony. (Post, p. 10.)

The Circuit Court of Appeals on this record determined for itself, as a federal question, that petitioner's contract of employment was made up of his individual contract of employment into which the collective bargaining agreement is integrated by operation of law. The record shows the collective bargaining agreement is in writing. Petitioner neither alleged nor proved that his individual contract of employment was in writing. The Circuit Court of Appeals concluded that the three years' statute of limitations might be applicable if the individual contract of employment was not in writing and reversed and remanded the case for a trial of that issue.

Respondent insists that the Circuit Court of Appeals was free to determine for itself, from the record before

it, whether the employment contract on which petitioner sued was wholly in writing or partly in writing and partly in parol. Since the employment relationship between petitioner and respondent is governed by the Railway Labor Act of Congress, the make-up of the employment contract is a federal question. After ascertaining that the employment contract is partly in parol, there can be no difficulty in applying the applicable state statute of limitations as interpreted by the highest court of the state.

2. Respondent contends, in the alternative, that in any event the judgment of the Circuit Court of Appeals should be affirmed because petitioner is required by the Railway Labor Act of Congress to exhaust the remedy for the adjustment of his grievance provided in the collective bargaining agreement and in the Act itself, as a prerequisite to his right to resort to the courts, which petitioner failed to do; that his suit therefore is premature and should be dismissed.

This point was decided adversely to respondent by the Circuit Court of Appeals. It is urged here by respondent as a reason why the judgment below should be affirmed, although decided adversely to respondent below, which respondent understands to be proper practice under the authority of such cases as *Langnes v. Green*, 282 U. S. 531, 75 L. ed. 520; *Story Parchment Co. v. Patterson Parchment Paper Co.*, et al., 282 U. S. 555, 75 L. ed. 544; and *Robertson and Kirkham, Jurisdiction of Supreme Court*, p. 804.

The manner in which the foregoing contentions of respondent were raised and disposed of below is stated in some detail under the two headings immediately following.

PROCEEDINGS ON RESPONDENT'S PLEA OF THREE YEARS' STATUTE OF LIMITATIONS.

The suit was instituted in a state circuit court (R. p. 1) on September 15, 1936 (R. p. 19). Petitioner was discharged on February 15, 1933 (R. p. 104). Respondent filed a general issue plea (R. p. 22) and special pleas, among them special plea No. 6 (R. p. 39) invoking the bar of the three years' statute of limitations (Section 2299, Mississippi Code 1930). Petitioner's demurrer to the sixth special plea (R. p. 38) was sustained (R. p. 54), but the court held that other special pleas to which petitioner had demurred stated a good defense and, petitioner declining to plead further, dismissed petitioner's suit (R. p. 54). Petitioner appealed (R. p. 55). The State Supreme Court held the demurrer to the sixth special plea good, reversed on other grounds and remanded the case for trial on the merits. *Moore v. Illinois Central R. Co.*, 180 Miss., 276, 176 So. 595. After remand, petitioner amended his complaint so as to sue for more than $3,000.00 (R. p. 57). Thereupon respondent removed to the United States District Court (R. p. 57) where respondent, as hereinafter mentioned, withdrew all pleas filed in the state court and filed a plea in abatement (R. p. 60) which was overruled, and then refiled special pleas (R. pp. 65-76) similar to those previously filed in the state court. One was the plea of the three years' statute of limitations (R. p. 75). Petitioner's demurrer to this special plea (R. p. 83) was sustained (R. p. 86). Thereupon respondent answered by leave of court (R. p. 87), there was a trial on the merits and judgment for petitioner (R. p. 200). Respondent appealed (R. p. 206). The Circuit Court of Appeals held that the demurrer to the sixth special plea should not have been sustained because petitioner's contract of employment by

respondent consists of the collective bargaining agreement integrated into his individual contract of employment, both together constituting the contract on which he sues, and that there was neither allegation nor proof that petitioner's individual contract of employment was in writing; and that the issues on that plea should have been tried on the merits (R. p. 224). It reversed and remanded for such a trial (R. p. 227).

PROCEEDINGS ON RESPONDENT'S PLEA IN ABATEMENT OF THE SUIT.

After the removal, respondent, with leave, withdrew all pleas filed in the state court and filed in the district court a plea in abatement (R. p. 60) seeking dismissal of the suit because petitioner had failed to pursue the remedy for the adjustment of his grievance provided in the collective bargaining agreement between the Brotherhood of Railroad Trainmen and the Illinois Central Railroad Company, as he was required to do by both the agreement and the Railway Labor Act of May 20, 1926, as amended June 21, 1934, 48 Stat. at L. 1185, 45 U. S. C. A. Sec. 151, et seq. A demurrer to the plea in abatement was sustained. The Circuit Court of Appeals held that the action of the district court on the plea in abatement was correct. (R. p. 225.)

The undisputed evidence shows that when discharged on February 15, 1933, petitioner demanded and was given a hearing by the superintendent (R. p. 115) as provided in the collective bargaining agreement. Dissatisfied with the superintendent's decision he appealed to the general superintendent, but abandoned the appeal (see efficiency record, R. pp 104-105).

ARGUMENT.

I.

Three Years' Statute of Limitations Was Applicable.

THE COLLECTIVE BARGAINING AGREEMENT IS NOT OF ITSELF A CONTRACT OF EMPLOYMENT. PETITIONER'S INDIVIDUAL CONTRACT OF EMPLOYMENT WAS NEITHER ALLEGED NOR PROVED TO HAVE BEEN WHOLLY IN WRITING.

Petitioner insists that the written agreement between the labor union and respondent without more is the contract of employment between petitioner and respondent and so denominates it throughout. The state court agreed and applied the six years' statute (Section 2292, Mississippi Code 1930) accordingly. Respondent submits that an examination of the agreement (R. pp. 4-16) conclusively demonstrates that it is not a contract of employment, but is only what it is denominated, a "Schedule of Wages and Rules Governing Yardmen and Switchtenders." It is true that this schedule is integrated into all contracts of hiring with individual switchmen, and so long as a switchman is retained in the service the terms and conditions of the schedule govern the rates of pay, hours of service and other details of the employment. Nevertheless, in and of itself, the schedule of wages and rules does not provide for the employment of individual switchman or bind the labor union to furnish switchmen or the railroad company to employ switchmen, nor does it provide for the commencement of the employment of individual switchmen.

Petitioner's declaration avers that he was employed by respondent June 2, 1926. The collective bargaining agreement was entered into on April 1, 1924 (R. p. 4). It was in existence then when petitioner was employed. Hence it became an integral part of his contract of employment by operation of law.

The Circuit Court of Appeals took cognizance of this situation and held that, in addition to showing the existence of the schedule, petitioner was required to establish his individual contract of employment and show whether it too was entirely in writing.

The only decision of the state court of last resort touching the question whether petitioner's suit is based on an oral or written contract is its decision in this case. That court said (180 Miss. 291):

> "The appellant's suit is not on a verbal contract between him and the appellee, but on a written contract made with the appellee, for appellant's benefit, by the Brotherhood of Railroad Trainmen; consequently, section 2299, Code of 1930, has no application, and the time within which the appellant could sue is six years under section 2292, Code of 1930."

In holding otherwise the Circuit Court of Appeals said (112 Fed. 965):

> "It follows clearly that when an individual employee sues for damages for a breach of his contract of employment because of a discharge contrary to the collective agreement as Moore does; * * * he is not suing on the written collective agreement, but upon his parol contract of hiring, which adopted those terms of the collective agreement which are applicable to him. * * * It is not apparent from the petition that Moore's contract of employment is wholly provable in writing, and the plea of the three year statute should not have been stricken on demurrer."

The soundness of the view of the Circuit Court of Appeals is, we respectfully say, beyond question, for it must be conceded that in order to maintain a suit for breach of a contract of hiring the plaintiff must prove the essential elements of a contract, indicating with reasonable definite-

ness (1) the parties thereto, (2) the general character of the services to be performed, (3) the place where and the person to whom services are to be rendered, and (4) the compensation to be paid.

39 C. J., p. 40, Sec. II.

Under this principle the schedule in question is no contract of employment. It does not indicate whether petitioner here was a conductor, engineer, fireman, brakeman, switchman, switchtender, or engaged in some other service. It does not indicate when he was employed or where he was to work. It does not establish the relationship of employer or employee between petitioner and respondent.

In other words, the schedule in question merely provides working conditions which are to be applied to any contract of employment that may be made. It is in no sense a contract of employment itself.

> "Like every other contract, the relation of master and servant is a product of the meeting of minds * * * there must be some act or contract by which the parties recognize one another as master and servant."
>
> 18 R. C. L., p. 493.

Tested by this principle, it could not possibly be said that a contract of employment between petitioner and respondent was proven by the mere production of the schedule in question.

Petitioner cites *Gulf & Ship Island R. Co. v. McGlohn,* 183 Miss. 465, 184 So. 71; *Gulf & Ship Island R. Co. v. McGlohn,* 179 Miss. 396, 174 So. 250; *Yazoo & Mississippi Valley R. Co. v. Sideboard,* 161 Miss. 4, 133 So. 669, in addition to the instant case, as supporting his contention that the

state court has held that suits of this kind are suits on written contracts to which the six years' statute of limitations is applicable, rather than the three years' statute. But none of those cases involved either statute of limitation or affords any support for petitioner's contention. An examination of each of those cases shows that the question of the applicability of any particular statute of limitations was not involved and was not passed upon by the court. In the Sideboard case, supra, there was involved the question as to whether under a labor union contract, somewhat similar to the contract in question in the instant case, a person performing the duties of a flagman was entitled to the wages of a flagman, whether a member of the union or not. Neither the plaintiff nor the railroad company in that case raised any question about the nature of the contract or the question of limitation of action.

In the two McGlohn cases, supra, the Supreme Court of Mississippi had under consideration the construction of an entirely different contract with a different labor organization, and containing different provisions with respect to trials, discharges, etc., but in neither of these cases was the question of the applicability of any particular statute of limitations involved, and neither the court nor the parties, so far as the record in these cases show, adverted to the question of which statute applied. We submit that neither of these cases is authority for the contentions of the petitioner.

The decision of the Circuit Court of Appeals is not in conflict with any previous decision of the Mississippi Supreme Court, but on the contrary is supported by previous decisions. *City of Hattiesburg v. Cobb Bros. Construction Co.*, 174 Miss. 20, 163 So. 676. In that case the

Court held that suits on contracts which are entirely provable by writing are governed by the six years' statute of limitations and suits on contracts which are not entirely provable by writing are governed by the three years' statute of limitations. The Court said:

> "If there is any break in the chain of the writings and such break has to be supplied by parol testimony, then the three years' statute applies and not the six years."

Many Mississippi cases are therein cited to the same effect. We have found none to the contrary.

From what has been said it is apparent, respondent submits, that the Circuit Court of Appeals correctly held that the Schedule of the Wages and Rules Governing Yardmen and Switchtenders is not in itself a contract of employment and that to claim rights thereunder petitioner must allege and prove his individual contract of employment by respondent. If on another trial it appears that his individual contract of employment was wholly in writing the three years' statute would not bar the suit. On the other hand, if it was wholly or partly verbal the three years' statute would bar the suit, under the Mississippi decisions. Whatever the individual contract of employment was, the schedule became a part of it, but absent an individual contract of employment petitioner could claim no rights under the schedule.

This court has recognized the necessity for individual contracts of employment with individual employees and separate contracts with the labor unions governing conditions of work. *Virginia Ry. Co. v. System Federation,* No. 40, 300 U. S. 515, 81 L. Ed. 789, where the court said:

> "The provisions of the Railway Labor Act applied in this case, as construed by the court below, and as

> we construe them, do not require petitioner to enter into any agreement with its employees, and they do not prohibit its entering into such contract of employment as it chooses, with its individual employees."

The plea of the three years' statute of limitation, therefore, should not have been stricken on demurrer but petitioner should have been required to join issue thereon so that the question of fact as to whether the individual contract of employment was wholly in writing could have been tried in an orderly manner. The Circuit Court of Appeals so held.

WHETHER PETITIONER COULD SUE ON THE COLLECTIVE BARGAINING AGREEMENT WITHOUT PROVING HIS INDIVIDUAL CONTRACT OF EMPLOYMENT WAS NOT A MATTER OF LOCAL LAW.

The Railway Labor Act of Congress governs the employment relationship, embracing both petitioner's individual contract of employment and the collective bargaining agreement which became a part of it. Whether his right to sue for his alleged wrongful discharge rests on both his individual contract of employment and the collective bargaining agreement, or on the latter alone, is a question arising under the Railway Labor Act of Congress and therefore a federal question. The Circuit Court of Appeals held that petitioner's right to sue depended on his entire contract of employment embracing both his individual contract of employment and the collective bargaining agreement. That was a federal question which the Circuit Court of Appeals was free to decide for itself. Having so decided that federal question, the Circuit Court of Appeals applied the State Statute of Limitations as interpreted by the State Court, to that situation.

The Circuit Court of Appeals did not encroach upon the domain of state law. It applied the state statute as interpreted by the state court to an employment contract depending for its characteristics on the Railway Labor Act of Congress. Obviously, the doctrine of *Erie R. Co. v. Tompkins*, 304 U. S. 64, 82 L. ed. 1188 was not disregarded by the Circuit Court of Appeals.

The action of the Circuit Court of Appeals is strictly in accord with the recent decision of this court in *A. F. Rawlings, Receiver, v. Mrs. Ella M. Ray*, No. 327, decided February 3, 1941, wherein the Arkansas statute of limitations as interpreted by the state court was applied, but the time when the "cause of action accrued" under applicable federal legislation was held to be a federal question which this court decided for itself.

Hence, the Circuit Court of Appeals was warranted in re-examining the question and arriving at its own conclusion as to whether the three years' state statute of limitations might be applicable to the case made by the declaration upon pertinent evidence, for the reasons so ably set out in the Court's opinion, i.e., that the make-up of petitioner's contract of employment was not a question of local law, the subject matter of the litigation being his rights under a collective bargaining agreement, operative in many states, between a labor union and an interstate carrier by rail, made pursuant to the Railway Labor Act of Congress. *Illinois Central R. Co. v. Moore*, 112 F. 2d 959. The Circuit Court of Appeals said (p. 963):

> "We are impressed with the seriousness of the question as to what law determines the validity and meaning of railroad union contracts, and the remedies applicable to them; and of the practical consequences of

> the holding that for so long a period as six years a discharged employee may sit quiet without the pursuit of the special remedies in the contract or under the Acts of Congress, and then by suit recover back pay for that time, when perhaps proof may have become difficult touching the merits of his discharge."

After reviewing the applicable provisions of the Railway Labor Act the Court further said (p. 964):

> "A collective agreement between the employees of an interstate carrier by rail and their employer is therefore not a local matter as to whose nature and application the decisions of a State Supreme Court are binding on the federal courts. On the contrary, because of the subject matter, and of the federal legislation touching it, a federal court is bound to exercise an independent judgment, and the Supreme Court of the United States has final authority."

The Circuit Court of Appeals in announcing its conclusion said:

> "His contract of employment standing thus, and no federal statute providing any limitation, we think the pleaded State statute of three years may apply: 'Actions on an open account or stated account not acknowledged in writing, and signed by the debtor, and on any unwritten contract, express or implied, shall be commenced within three years next after the cause of such action accrued, and not after.' Mississippi Code, Sec. 2299. It is well settled that a contract is unwritten if the contract itself cannot be proven wholly by writings. 37 C. J., Limitations, Sec. 86. 'If there is any break in the chain of the writings and such break has to be supplied by parol testimony, then the three years' statute applies and not the six years.' * * * Any break in the writing or writings which is material and provable only by parol brings the three years' statute into

operation.' City of Hattiesburg v. Cobb Bros. Const. Co., 174 Miss. 20, 163 So. 676, 678. It is not apparent from the petition that Moore's contract of employment is wholly provable in writing, and the plea of the three year statute should not have been stricken on demurrer.''

CIRCUIT COURT OF APPEALS RIGHTLY HELD THAT THE PLEA OF THE THREE YEARS' STATUTE SHOULD NOT HAVE BEEN STRICKEN ON DEMURRER.

Respondent respectfully submits that the Circuit Court of Appeals, on this record, righly decided for itself that the employment relationship which existed between petitioner and respondent rested on petitioner's individual contract of employment by respondent of which the collective bargaining agreement became a part by reason of the provisions of the Railway Labor Act of Congress; that petitioner could not sue directly on the collective bargaining agreement alone, and that petitioner had failed to allege and prove that his individual contract of employment was entirely in writing.

Wherefore, on this appeal, the Circuit Court of Appeals was free to hold that the three years' statute of limitations as the state court of last resort consistently construed it (*City of Hattiesburg v. Cobb Bros.*, 174 Miss. 20, 163 So. 676) might bar the suit notwithstanding the state court had held that the collective bargaining agreement, wholly written, was petitioner's entire contract of employment and that the three years' statute was not applicable (*Moore v. Illinois-Central R. Co.*, 180 Miss. 276, 176 So. 593).

The Circuit Court of Appeals was free to do so further because, on the second appeal, that court by the removal

had been substituted for the state court (*Wichita Royalty Co. v. City Bank*, 306 U. S. 103, 83 L. ed. 515), and the latter court would have been free on the second appeal to correct or alter its former decision in this manner (*Brewer, et al., v. Browning*, 115 Miss. 358, 76 So. 267; *Maxwell v. Harkelroad*, 77 Miss. 456, 27 So. 990). This court is likewise committed to the same doctrine. *Messenger v. Anderson*, 225 U. S. 436, 56 L. ed. 1152.

It follows that, whether the question involved was one of local law or not, under the decisions of the Mississippi Supreme Court and of this court the Circuit Court of Appeals was free to re-examine it on the second appeal and arrive at a decision contrary to the decision on the first appeal if it saw proper to do so.

The decisions of this court and of other Federal Courts relied on by petitioner, setting forth the duty of a Federal Court to follow the decisions of a state court in construing and applying a state statute of limitations are not in point here, we respectfully submit, for all the reasons above stated.

—o—

Respondent respectfully submits that the decision of the Circuit Court of Appeals is right and proper, does not depart from previous decisions of the Supreme Court of Mississippi construing the statute, and is not in conflict with any decision of this court.

II.

Petitioner's Suit Premature Because He Has Not Exhausted Administrative Remedies.

THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS IS CORRECT BECAUSE THE DEFENSE SET UP BY RESPONDENT'S PLEA IN ABATEMENT IS GOOD.

The plea in abatement is found at record pages 60 to 63, inclusive. Respondent submits that both the district court and the Circuit Court of Appeals were in error in sustaining petitioner's demurrer to the plea in abatement, and that for this additional reason the judgment of the Circuit Court of Appeals should not be disturbed.

Helvering v. Gowran, 302 U. S. 238, 82 L. ed. 224.

By the plea in abatement respondent invokes the provisions of the Railway Labor Act of Congress, Section 153, Title 45, U. S. Code Annotated. That Act (Section 151a) is a studied recognition of the desirability of preserving harmonious relations between interstate railroads and their employees and is one of the early acts of Congress providing the machinery for collective bargaining between employers and employees. The Act provides for the selection of collective bargaining representatives by the employees and requires the railroads to deal with such representatives (Section 152) and provides the method for the settling of grievances, disputes and disagreements between an individual employee or group of employees and the railroad touching rates of pay, working conditions and contracts of employment (Section 152). The Act is mandatory as to the duty of railroad companies to make agreements with their employees through their bargaining representatives, and as to grievances thereunder the Act in Section 153 (i) provides:

> "The disputes between employee or group of employees and a carrier or carriers growing out of griev-

ances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, *shall* be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Petitioner's grievance was pending and unadjusted on June 21, 1934.

By Section 153 (m) the Adjustment Board is authorized to hear the dispute and to make such award as it deems proper under the facts of the case. The Act in Section 153 (q) contains its own statute of limitations, i.e., two years after the Adjustment Board's award.

In the instant case petitioner claims the benefits of the collective bargaining agreement between the Brotherhood of Railroad Trainmen and the Illinois Central Railroad Company. He specifically relies on Article 22 (D) of the agreement (R. p. 15), which is as follows:

"Yardmen or switchtenders taken out of the service or censured for cause, shall be notified by the Company of the reason therefor, and shall be given a hearing within five days after being taken out of the service, if demanded, and if held longer shall be paid for all time so held at their regular rates of pay. Yardmen or switchtenders shall have the right to be present and to have an employee of their choice at hearings and investigations to hear the testimony, and ask questions which will bring out facts pertinent to the case. They shall also have the right to bring such witnesses as they desire to give testimony, and may appeal to higher officers of the Company in case the decision is unsat-

> isfactory. Such decision shall be made known within three days at New Orleans and at other points ten days after the hearing, or yardmen or switchtenders shall be paid for all time lost after the expiration of three days at New Orleans and ten days at other points. In case the suspension or dismissal or censure is found to be unjust, yardmen and switchtenders shall be reinstated and paid for all time lost."

His whole case is pitched on the last sentence of that article. That sentence provides the right, the remedy and redress. Petitioner claims as a third party beneficiary. As such, he must take the agreement as he finds it. If he elects to take the benefits of the agreement he must take its burdens also. "Qui sentit commodum sentire debet et onus." *Broom's Legal Maxims* (7th ed., 1874), p. 705; *Yazoo and M. V. R. Co. v. Webb,* 64 F. 2d 902. Phrased differently: "One may not select the desirable morsels served by his contract and toss the less choice parts beneath the table." *Northern State Contracting Co. v. Swope,* 271 Ky. 140, 111 S. W. 2d 610. The hearings and appeals provided in the article quoted are obviously what the Congress had in mind when it required by Section 153 (i) that "the disputes * * * shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes," etc.

This record shows that petitioner was familiar with Article 22 (D) of the agreement. The right of action he asserts depends on it. In fact, he set in motion the machinery provided in Article 22 (D) for determining the justness or unjustness of his discharge, but he failed and refused to prosecute the appeal he took from the superintendent's decision, abandoned the appeal and took his case to court. In this situation it was and is the contention of the respondent that under both the Railway Labor Act and

the agreement made pursuant thereto it was petitioner's duty to exhaust the remedies provided by the agreement before resorting to the courts. Indeed, it logically follows that his only redress is that provided in the agreement, i.e., reinstatement and payment for all time lost. Respondent goes further. It contends that the word "may" in the paragraph of the Act quoted above, is mandatory, and that before petitioner can resort to the courts he must have a favorable award from the National Railroad Adjustment Board. The Circuit Court of Appeals and the district court held that the foregoing statutory and contractual provisions are permissive only and that petitioner was not required to exhaust the contractual remedy, but could resort to the courts without seeking the relief provided in the agreement. This holding is contrary to the decision of the Circuit Court of Appeals for the Eighth Circuit in *Harrison v. Pullman Co.*, 68 F. 2d 826. That Court said in passing upon the right of an employee to seek redress in the courts for breach of such a contract of hiring:

> "It is evident that this contract between the Pullman Company and its employees was entered into for the purpose of establishing a complete and explicit code for the adjustment of labor disputes involving, among other things, such questions of employment. Appellant in terms sues because of an alleged breach of his contract, and, to prevail, he must show that he has brought himself within its terms and has been unable to secure a satisfactory adjustment by the means therein expressly provided. This he has failed to do, and for this reason he is unable to present his case in court as a justiciable controversy."

See also:

Estes, et al., v. Union Terminal Co., 89 F. 2d 768;
St. Louis, B. & M. Ry. Co. v. Booker (Tex. Civ. App.), 5 S. W. 2d 856;

Cousins v. Pullman Co. (Tex. Civ. App.), 72 S. W. 2d 356;
Norfolk & W. Ry. Co. v. Harris, 260 Ky. 132, 84 S. W. 2d 69;
Reed v. St. Louis S. W. R. Co. (Mo. App.), 95 S. W. 2d 887;
Swilley v. Galveston, H. & S. A. Ry. Co. (Tex. Civ. App.), 96 S. W. 2d 1082;
Wyatt v. Kansas City Sou. Ry. Co. (Tex. Civ. App.), 101 S. W. 2d 1082;
Caulfield v. Yazoo & M. V. R. Co., 170 La. 155, 127 So. 585;
Bell v. Western Ry., 228 Ala. 328, 153 So. 434;
Adams v. Southern P. Co., 204 Cal. 63, 266 Pac. 541, 57 A. L. R. 1066.

The Circuit Court of Appeals in the instant case recognized the fact that the Railway Labor Act has for one of its purposes the prompt and orderly settlement of all disputes growing out of the interpretation and application of agreements covering rates of pay, rules and working conditions; that by Title 45, U. S. C. A., Section 152, railroads and their employees are required to exert every effort to make and maintain collective bargaining agreements, and that all disputes between a carrier and its employees are required to be considered and decided with expedition in conferences between representatives designated and authorized to confer. Notwithstanding that both the railroad and the employee must submit grievances through the channels provided by the Act and the agreement, the Circuit Court of Appeals held that the employee is at liberty to ignore the provisions of the Act and the terms of the agreement and resort to the courts in the first instance.

We submit that this holding in effect thwarts the legislative purpose to prevent any interruption of interstate

commerce and to provide for the orderly settlement of disputes between railroads and their employees in the manner provided in collective bargaining agreements. If the individual employee may ignore the terms of the Act and of the collective bargaining agreement and go direct to the courts without exhausting the remedy and seeking the redress provided thereby, the Act, insofar as employees are concerned, is unenforceable and impotent to prevent the very threats to commerce that Congress sought to avoid.

Furthermore, if the adjustment of grievances may be left in the hands of juries in the several courts of the numerous states through which respondent operates there can be no repose under the collective bargaining agreement and the resulting inequalities of administration may lead to the very disturbances the Railway Labor Act was designed to prevent.

Respondent therefore submits that the judgment of the Circuit Court of Appeals finds ample support on this further ground, and hence is correct in any event and should not be disturbed.

CONCLUSION.

Respondent respectfully submits that the judgment below is correct and should be affirmed.

Respectfully submitted,

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Of Counsel.

CERTIFICATE.

Service of the foregoing Brief of Respondent is hereby acknowledged, this the.....day of March, 1941.

.....

Jackson, Mississippi,
Of Counsel for Petitioner.

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APPENDIX A.

Mississippi Code, 1930.

Section 2292. Actions To Be Brought in Six Years.

All actions for which no other period of limitation is prescribed shall be commenced within six years next after the cause of such action accrued, and not after.

Section 2299. Actions To Be Brought in Three Years.

Actions on an open account or stated account not acknowledged in writing, signed by the debtor, and on any unwritten contract, express or implied, shall be commenced within three years next after the cause of such action accrued and not after.

APPENDIX B.

Railway Labor Act of Congress of May 20, 1926, as Amended June 21, 1934, 48 Stat. at L. 1185, 45 U. S. C. A. Section 151, et Seq.

Section 151. Definitions; "Railway Labor Act"

When used in this chapter and section 225 of Title 28 and for the purposes of said chapter and section—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to chapter 1 of Title 49, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however,* That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this chapter.

Third. The term "Mediation Board" means the National Mediation Board created by this chapter.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Commission.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the district court of the United States for the District of Columbia; and the term "circuit court of appeals" includes the United States Court of Appeals for the District of Columbia.

This chapter may be cited as the "Railway Labor Act." (May 20, 1926, c. 347, Sec. 1, 44 Stat. 577; June 7, 1934, c. 426, 48 Stat. 926; June 21, 1934, c. 691, Sec. 1, 48 Stat. 1185; June 25, 1936, c. 804, 49 Stat. 1921.)

Section 151a. General Purposes

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions. (May 20, 1926, c. 347, Sec. 2, 44 Stat. 577, as amended June 21, 1934, c. 691, Sec. 2, 48 Stat. 1186.)

Section 152. General duties

First. Duty of carriers and employees to settle disputes

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. Consideration of disputes by representatives

All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Designation of representatives

Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden

Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided,* That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. Agreements to join or not to join labor organizations forbidden

No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this chapter, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. Conference of representatives; time; place; private agreements

In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided,* (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further,* That nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. Change in pay, rules or working conditions contrary to agreement or to section 156 forbidden

No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this chapter.

Eighth. Notices of manner of settlement of disputes; posting

Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this chapter, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. Disputes as to identity of representatives; designation by Mediation Board; secret elections

If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organiza-

tions that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. Violations; prosecution and penalties

The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with

the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided,* That nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent. (May 20, 1926, c. 347, Sec. 2, 44 Stat. 577, as amended June 21, 1934, c. 691, Sec. 2, 48 Stat. 1186.)

Section 153. National Railroad Adjustment Board

First. Establishment; composition; powers and duties; divisions; hearings and awards

There is hereby established a Board, to be known as the "National Railroad Adjustment Board," the members of which shall be selected within thirty days after June 21, 1934, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the

employees, national in scope, as have been or may be organized in accordance with the provisions of section 152 of this chapter.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees or through an officer or officers designated for that purpose by such board, trustee or trustees or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

(c) The national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after June 21, 1934, in case of any original appointment to office

of a member of the Adjustment Board, or in case of a vacancy in such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 152 of this title and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f)

of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance, in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees,

signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee," to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon

request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail

he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(u) The Adjustment Board shall meet within forty days after June 21, 1934, and adopt such rules as it deems necessary to control proceedings before the respective divisions

and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisons shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice-chairman: *Provided, however,* That the chairmanship and vice-chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice-chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this chapter, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this chapter and disbursed by such agencies, employees, and officers.

(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in

keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (1) hereof, with respect to a division of the Adjustment Board.

Second. Establishment of system, group or regional boards by voluntary agreement.

Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this chapter, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board. (May 20, 1926, c. 347, Sec. 3, 44 Stat. 578, as amended June 21, 1934, c. 691, Sec. 3, 48 Stat. 1189.)

Section 154. National Mediation Board

(Omitted)

Section 155. Functions of Mediation Board
(Omitted)

Section 156. Procedure in changing rates of pay, rules and working conditions
(Omitted)

Section 157. Arbitration
(Omitted)

Section 158. Agreement to arbitrate; form and contents; signatures and acknowledgment; revocation
(Omitted)

Section 159. Award and judgment thereon; effect of chapter on individual employee
Omitted down to paragraph Eighth, which is as follows:

Eighth. Duty of employee to render service without consent; right to quit. Nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent. (May 20, 1926, c. 347, Sec. 9, 44 Stat. 585.)

Section 160. Emergency Board
(Omitted)

Section 161. Effect of partial invalidity of chapter
(Omitted)

Section 162. Appropriation

(Omitted)

Section 163. Repeal of prior legislation; exception

(Omitted)

Section 164. Advertisements for proposals for purchases or services rendered for Board of Mediation, including arbitration boards.

(Omitted)